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OFFICE OF PETITIONS

In re Application of
NISHIMURA, KEN A. et al
Application No. 10/087,386
Filed: March 1, 2002
Attorney Docket No. 10004331-1

DECISION ON PETITION

This is a decision on the petition filed December 12, 2005, under 37 CFR 1.182 to the Office of Petitions, to reconsider the Notice of Panel Decision from Pre-Appeal Brief Review mailed October 18, 2005.

The petition is **GRANTED to the extent below.**

On October 18, 2005, the USPTO held that applicant's Pre-Appeal Brief Request for Review (Request) filed on October 5, 2005 was an improper Request because an Information Disclosure Statement (IDS) was filed along with the Request, and the requested conference would not be held.

Petitioner requests relief under 37 CFR 1.182 to reconsider the decision on the Notice of Panel Decision of October 18, 2005 denying a pre-appeal brief conference on the basis of the concurrent filing of a supplemental IDS.

The Director cannot consider petitions pursuant to 37 CFR 1.182 on questions where the relief is already provided for. Specifically, the *Off. Gaz. Pat. Off* of July 12, 2005 set forth the requirements and guidelines for consideration and termination of the Pre-Appeal Brief Conference Request. Any review involving an *ex parte* action or requirement in a patent application is referred to the Group Director of the Technology Center to invoke supervisory authority under the provisions of 37 CFR 1.181. See MPEP 1002.02(c)(3). Should an applicant, in turn, seek review of an adverse action of the Group Director, that review would come before the Office of Petitions under the provisions of 37 CFR 1.181. Accordingly, the petition is granted solely to the preliminary, procedural extent that the Technology Center Director is authorized to consider the petition under the provisions of 37 CFR 1.181(a).

This application file is being referred to the Technology Center Director of Art Unit 2613 as a petition under 37 CFR 1.181 seeking to invoke supervisory authority of the Technology Center Director for reconsideration on the decision on the Pre-Appeal Brief Request for Review filed on October 18, 2005.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

Telephone inquiries concerning this decision should be directed to Amelia Au at (571) 272-7414.

A handwritten signature in black ink, appearing to read "Brian Hearn". The signature is fluid and cursive, with the first name "Brian" and last name "Hearn" clearly distinguishable.

Brian Hearn
Petitions Examiner
Office of Petitions